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CT- 2022-002

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REGISTRAR / REGISTRAIRE

CT-2022-002

OTTAWA, ONT.

Doc. #122

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

MOTION RECORD

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**Counsel to the Commissioner of
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TAB 1

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

NOTICE OF MOTION

(Commissioner's Motion for a further and better Affidavit of Documents from Rogers)

TAKE NOTICE THAT the Commissioner of Competition ("**Commissioner**") will make a motion to the Competition Tribunal ("**Tribunal**") on August 4, 2022, further to the Scheduling Order of June 17, 2022 ("**Scheduling Order**"), or on a date to be fixed by the Tribunal.

THE MOTION IS FOR an Order compelling Rogers Communications Inc. ("**Rogers**):

- a) to serve on the Commissioner a further and better affidavit of documents, that in particular:

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- i) lists each document with the information required by paragraph 14 of the discovery plan dated June 28, 2022 agreed to between the parties (the “**Discovery Plan**”);
 - ii) with respect to electronically stored information, lists each document with the information required by paragraph 2 of Schedule B of the Competition Bureau’s *Enforcement Guidelines for the Production of Electronically Stored Information* dated April 28, 2015 (“**Enforcement Guidelines**”);
- b) to produce the document referred to as its “**[REDACTED]**”.
- c) to produce unprotected copies of any documents listed in Schedule A of its affidavit of documents that are password-protected, as listed in **Schedule “A”** to this Notice of Motion.
- d) to produce, in full or partially redacted as necessary, the documents listed in **Schedule “B”** to this Notice of Motion over which privilege has been claimed by Rogers.

THE GROUNDS FOR THE MOTION ARE:

The Discovery Plan

- a) On June 28, 2022, the Respondents and the Commissioner agreed upon the Discovery Plan.
- b) The Discovery Plan requires that the parties’ affidavit of documents list each document produced or withheld and, among other things, the document titles.
- c) The Discovery Plan incorporated by reference the Enforcement Guidelines with respect to electronically stored information. The

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Enforcement Guidelines require, that among other things, litigation application exports include fields for bates numbers for any parent and child records, document custodians, CCs, BCCs, electronic file names, and MD5 hash values.

- d) On July 15, 2022, Rogers served the Commissioner with its affidavit of documents and document production.

Rogers' Affidavit of Documents

- e) Rogers failed to provide certain metadata fields in its electronic document production as required by the Enforcement Guidelines and the Discovery Plan, including bates numbers for any parent and child records, the names of document custodians, CCs, BCCs, electronic file names, and MD5 hash values.
- f) Rogers failed to provide document titles for approximately 24,990 (or 86%) of the 28,834 documents listed in Schedule B of its affidavit of documents.
- g) Rogers was required to provide this information under the Discovery Plan, or otherwise indicate the titles were redacted.

Rogers' Document Production

- h) Rogers produced documents that are password-protected, but has not provided the Commissioner with the necessary passwords to access the documents.
- i) Rogers claimed solicitor-client privilege over communications in which legal counsel was neither the sender, recipient, nor otherwise copied on the communication.

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- j) Rogers claimed solicitor-client privilege, litigation privilege, or both over documents that, on their face, appear to be documents created in the ordinary course of business and not for the purpose of either the seeking or giving of legal advice, nor the dominant purpose of litigation.

█ In its document production on July 15, 2022, Rogers produced █

█

l)

█

█ Such █ are an element of the parties' current efficiencies claims under section 96 of the *Competition Act*.

- m) Rogers' affidavit of documents from July 15, 2022 and Rogers' document productions do not contain █

█

General

- n) On July 26, 2022, the Commissioner requested that Rogers correct these deficiencies in a letter to counsel for Rogers.
- o) On July 28, 2022, counsel to Rogers responded to the letter dated July 26, 2022. In his letter, Rogers' counsel contested that Rogers was required to provide the information fields listed in paragraphs 6 and 8

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of this affidavit. Nevertheless, Rogers' counsel attached a revised privilege list that he states includes updated document titles, parent/child relationship, document author, and CC fields. Furthermore, Rogers' counsel advised that "Rogers will provide a coding overlay for its last two productions with the requested fields: custodians, CC, BCC, electronic file name and MD5 hash values. The coding overlay will be uploaded to the secure file site shortly and transmitted by secure email."

- p) With respect to the privilege claims challenged in the letter dated July 26, 2022, Rogers' counsel alleged only 4,466 do not list counsel as a recipient, sender, or author and reiterated the validity of its privilege claims over these documents. Rogers' counsel also disagreed with the Commissioner's request for further details on privilege claims made by Rogers over documents that appear from their titles to be documents created in the ordinary course of business.
- q) With respect to the [REDACTED], Rogers counsel stated that "It is unclear what document the Commissioner believes exists and is not contained in the production."
- r) With respect to the documents listed in **Schedule "A"** to this Notice of Motion, Rogers' counsel advised in his letter that they have asked document authors to provide the passwords and Rogers will send the passwords to the Commissioner as soon as they become available.
- s) As of the date of this motion, the Commissioner continues to review the revised privilege list provided by counsel for Rogers on July 28, 2022. The Commissioner will advise the Tribunal of any changes to the relief sought on this motion as a result of the revised privilege list.

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- t) An Order, as sought, from the Tribunal at this juncture would facilitate the expeditious and fair conduct of examinations for discovery.

- u) Sections 60, 63, 82 of the *Competition Tribunal Rules*, SOR/2008-141.

THE FOLLOWING EVIDENCE will be used at the hearing of the Motion:

- a) the affidavit of Kevin McWhinnie, affirmed July 27, 2022; and

- b) the affidavit of Marisa Wyse, affirmed July 15, 2022.

Dated at Toronto, Ontario this 28th day of July, 2022.



ATTORNEY GENERAL OF CANADA

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Kevin Hong**

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- 7 -

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Attorney General of Alberta**

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Schedule "A"

1. ROG00686395
2. ROG00687305
3. ROG00688852
4. ROG00697701
5. ROG00698392
6. ROG00698498
7. ROG00698560
8. ROG00698581
9. ROG00698671
10. ROG00698836
11. ROG00698912
12. ROG00699018
13. ROG00699188
14. ROG00699288
15. ROG00699351
16. ROG00699561
17. ROG00699562
18. ROG00699563
19. ROG00699787
20. ROG00699788
21. ROG00699860
22. ROG00699861
23. ROG00699862
24. ROG00699863
25. ROG00699864
26. ROG00699865
27. ROG00699866
28. ROG00699867
29. ROG00699868
30. ROG00699869
31. ROG00700006
32. ROG00700007
33. ROG00700008
34. ROG00700132
35. ROG00700136
36. ROG00700163
37. ROG00700205
38. ROG00700341
39. ROG00700526
40. ROG00700527
41. ROG00700610
42. ROG00700611
43. ROG00700812
44. ROG00700821
45. ROG00700886
46. ROG00701054
47. ROG00701056
48. ROG00701171
49. ROG00701432
50. ROG00701433
51. ROG00701434
52. ROG00701451
53. ROG00701599
54. ROG00701768
55. ROG00701769
56. ROG00701770
57. ROG00701771
58. ROG00701772
59. ROG00701773
60. ROG00701774
61. ROG00701775
62. ROG00701776
63. ROG00701777
64. ROG00701818
65. ROG00701912
66. ROG00701920
67. ROG00701950
68. ROG00701954
69. ROG00701955
70. ROG00701957
71. ROG00702335
72. ROG00702369
73. ROG00702370
74. ROG00702371
75. ROG00702451
76. ROG00702493
77. ROG00702529
78. ROG00702602
79. ROG00702630
80. ROG00702733
81. ROG00702950
82. ROG00703062
83. ROG00703316
84. ROG00703404
85. ROG00703405
86. ROG00703406

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87.	ROG00703407	133.	ROG00764647
88.	ROG00703408	134.	ROG00764648
89.	ROG00703409	135.	ROG00764650
90.	ROG00703673	136.	ROG00764651
91.	ROG00703735	137.	ROG00764705
92.	ROG00703742	138.	ROG00764857
93.	ROG00703743	139.	ROG00764858
94.	ROG00704064	140.	ROG00764859
95.	ROG00704367	141.	ROG00764875
96.	ROG00704368	142.	ROG00764897
97.	ROG00704404	143.	ROG00764972
98.	ROG00704405	144.	ROG00764999
99.	ROG00704780	145.	ROG00765000
100.	ROG00704781	146.	ROG00765001
101.	ROG00704796	147.	ROG00765066
102.	ROG00705624	148.	ROG00765144
103.	ROG00706928	149.	ROG00765184
104.	ROG00706929	150.	ROG00765194
105.	ROG00706965	151.	ROG00765195
106.	ROG00707172	152.	ROG00765196
107.	ROG00707341	153.	ROG00765262
108.	ROG00707342	154.	ROG00765263
109.	ROG00707405	155.	ROG00765264
110.	ROG00707699	156.	ROG00769744
111.	ROG00708027	157.	ROG00771667
112.	ROG00708762	158.	ROG00787630
113.	ROG00710132	159.	ROG00787776
114.	ROG00710211	160.	ROG00787963
115.	ROG00710702	161.	ROG00788009
116.	ROG00710935	162.	ROG00788020
117.	ROG00711085	163.	ROG00788040
118.	ROG00724633	164.	ROG00788110
119.	ROG00746644	165.	ROG00788125
120.	ROG00746939	166.	ROG00788126
121.	ROG00747102	167.	ROG00788169
122.	ROG00747105	168.	ROG00788243
123.	ROG00747219	169.	ROG00788289
124.	ROG00757138	170.	ROG00788318
125.	ROG00760907	171.	ROG00788335
126.	ROG00763649	172.	ROG00788368
127.	ROG00763650	173.	ROG00788406
128.	ROG00763918	174.	ROG00788442
129.	ROG00764194	175.	ROG00788457
130.	ROG00764317	176.	ROG00788459
131.	ROG00764605	177.	ROG00788475
132.	ROG00764633	178.	ROG00788491

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179.	ROG00788496	225.	ROG00795058
180.	ROG00788540	226.	ROG00795450
181.	ROG00788597	227.	ROG00795866
182.	ROG00788670	228.	ROG00796661
183.	ROG00788754	229.	ROG00796662
184.	ROG00788824	230.	ROG00798243
185.	ROG00788841	231.	ROG00798280
186.	ROG00788883	232.	ROG00798281
187.	ROG00788887	233.	ROG00798433
188.	ROG00788888	234.	ROG00798434
189.	ROG00788961	235.	ROG00799000
190.	ROG00789074	236.	ROG00799001
191.	ROG00789078	237.	ROG00800304
192.	ROG00789136	238.	ROG00800312
193.	ROG00789139	239.	ROG00800925
194.	ROG00789193	240.	ROG00802699
195.	ROG00789269	241.	ROG00806366
196.	ROG00789368	242.	ROG00815155
197.	ROG00789369	243.	ROG00815217
198.	ROG00789414	244.	ROG00815218
199.	ROG00789426	245.	ROG00815222
200.	ROG00789432	246.	ROG00815305
201.	ROG00789450	247.	ROG00815422
202.	ROG00789696	248.	ROG00815542
203.	ROG00789729	249.	ROG00815659
204.	ROG00789743	250.	ROG00815660
205.	ROG00789884	251.	ROG00815661
206.	ROG00789965	252.	ROG00815737
207.	ROG00790022	253.	ROG00815752
208.	ROG00790043	254.	ROG00816005
209.	ROG00790044	255.	ROG00816014
210.	ROG00790045	256.	ROG00816392
211.	ROG00790169	257.	ROG00816782
212.	ROG00790239	258.	ROG00816843
213.	ROG00790240	259.	ROG00816894
214.	ROG00790424	260.	ROG00816898
215.	ROG00790450	261.	ROG00816952
216.	ROG00790451	262.	ROG00817147
217.	ROG00790452	263.	ROG00817148
218.	ROG00790594	264.	ROG00817149
219.	ROG00790595	265.	ROG00817521
220.	ROG00790609	266.	ROG00817532
221.	ROG00790779	267.	ROG00817783
222.	ROG00790857	268.	ROG00817952
223.	ROG00794874	269.	ROG00818096
224.	ROG00795057	270.	ROG00818132

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271.	ROG00818133	300.	ROG00823084
272.	ROG00818188	301.	ROG00823122
273.	ROG00818198	302.	ROG00823123
274.	ROG00818199	303.	ROG00823306
275.	ROG00818242	304.	ROG00823307
276.	ROG00818332	305.	ROG00823308
277.	ROG00818379	306.	ROG00823459
278.	ROG00818380	307.	ROG00823482
279.	ROG00818506	308.	ROG00824281
280.	ROG00818510	309.	ROG00824461
281.	ROG00818541	310.	ROG00824463
282.	ROG00818723	311.	ROG00824694
283.	ROG00818850	312.	ROG00824695
284.	ROG00818872	313.	ROG00825060
285.	ROG00819179	314.	ROG00825061
286.	ROG00819188	315.	ROG00825289
287.	ROG00819195	316.	ROG00825290
288.	ROG00819198	317.	ROG00825380
289.	ROG00819229	318.	ROG00825382
290.	ROG00819230	319.	ROG00825485
291.	ROG00819355	320.	ROG00825696
292.	ROG00819356	321.	ROG00832831
293.	ROG00822338	322.	ROG00833129
294.	ROG00822339	323.	ROG00833714
295.	ROG00822375	324.	ROG00835925
296.	ROG00822644	325.	ROG00836275
297.	ROG00822646	326.	ROG00836685
298.	ROG00822718	327.	ROG00839338
299.	ROG00822911		

Schedule "B"

TAB 2

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34.

B E T W E E N :**COMMISSIONER OF COMPETITION****Applicant****- and -****ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.****Respondents**

AFFIDAVIT OF KEVIN MCWHINNIE

I, Kevin McWhinnie, a Competition Law Officer with the Competition Bureau (the “**Bureau**”), of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

1. I make this affidavit in support of the Commissioner of Competition’s (the “**Commissioner**”) motion concerning issues arising from the affidavit of documents and document production of Rogers Communications Inc. (“**Rogers**”).
2. I have been employed as a Competition Law Officer with the Bureau since October 2021. During this time I have been involved in the

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review of mergers and proposed mergers to determine whether such transactions: (a) prevent or lessen or are likely to prevent or lessen competition substantially, and (b) bring about any cognizable efficiencies under the Competition Act.

3. I am part of the case team working on a review of the proposed acquisition of Shaw Communications Inc. ("**Shaw**") by Rogers (the "**Proposed Merger**"). Except where otherwise indicated, I have personal knowledge of the matters referred to in this affidavit. Where I do not have personal knowledge, I have set out the grounds for my belief.

The Discovery Plan

4. On June 28, 2022, the parties to this application executed a discovery plan dated the same (the "**Discovery Plan**"), attached as **Exhibit "A"**. The Discovery Plan sets out the agreement reached by the Commissioner, Rogers and Shaw concerning certain matters relating to documentary discovery and oral discovery for the purposes of this application.
5. Paragraph 14 of the Discovery Plan requires that affidavits of documents and privilege lists prepared by the parties shall list each document produced or withheld and the following information:
 - a. DOCID;
 - b. DOCDATE;
 - c. DOCTITLE;
 - d. AUTHOR;
 - e. TO;
 - f. FROM;

- 3 -

- g. DOCTYPE; and
 - h. CONFIDENTIALITY LEVEL.
6. At paragraph 11 of the Discovery Plan, the parties agree to follow the Bureau's Enforcement Guidelines with respect to Production of Electronically Stored Information ("**Enforcement Guidelines**"), attached as **Exhibit "B"**.
7. In addition to the information required by paragraph 14 of the Discovery Plan applicable to all documents, Schedule B of the Enforcement Guidelines states that the following fields, among others, should be provided specifically with respect to electronically stored information:
- a. PARENTBATES (bates number of parent record);
 - b. CHILDBATES (bates number(s) of any child records);
 - c. MD5HASH (MD5HASH of the native format electronically stored information);
 - d. CUSTODIAN (document custodian);
 - e. CC;
 - f. BCC;
 - g. SUBJECT/TITLE; and
 - h. FILENAME.

Schedule B of Rogers' Affidavit of Document

8. On July 15, 2022, Rogers electronically served on counsel for the Commissioner via e-mail its affidavit of documents. The affidavit of documents was accompanied with a cover letter, attached as **Exhibit "C"**. Also on June 15, 2022, Rogers electronically served its document production on the Commissioner via a secure file transfer site.

9. Based on my review of Schedule B of Rogers' affidavit of documents as provided on July 15, 2022, I counted approximately 24,990 documents that do not have document titles listed. Schedule B to Rogers' affidavit of documents as provided on July 15, 2022 also does not list the names of the custodians in whose possession each document was found, or information on the family relationship of the documents.

10. The entirety of Rogers' electronic productions from July 15, 2022 do not include certain fields of metadata including custodians, CC and BC fields, electronic file name, and MD5 hash values.

Rogers' Document Production

11. I am informed by Alain Archambault (Technical Specialist, Competition Bureau), and verily believe, that after conducting a search of Rogers' document production, he identified examples of electronic documents that are password protected, as listed in **Schedule "A" ("Rogers' Locked Files")**. I am unable to access Rogers' Locked Files without the respective passwords. The cover letter accompanying the affidavit of documents does not provide the passwords to Rogers' Locked Files.

█ In its document production on July 15, 2022, Rogers produced █
█
█ attached as
Exhibit "D". █
█

13 █
█

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[REDACTED]

[REDACTED] Such [REDACTED]

[REDACTED] are an element of the parties' current efficiencies claims under section 96 of the *Competition Act*.

14. I conducted a careful search of Rogers' affidavit of documents from July 15, 2022 and Rogers' document productions for occurrences of

[REDACTED]

Correspondence with Counsel for Rogers

15. By letter to Rogers' counsel dated July 26, 2022, counsel to the Commissioner raised five deficiencies in Rogers' affidavit of documents and document production, including those raised above. Counsel for the Commissioner requested that Rogers address the deficiencies. As of the date of this affidavit, I am not aware of a response to the letter from Rogers or its counsel. I am informed by Miriam Varelalizardi (Paralegal, Competition Bureau Legal Services), and verily believe, that **Exhibit "E"** is a true copy of the letter dated July 26, 2022.

16. On July 28, 2022, counsel to Rogers responded to the letter dated July 26, 2022. I am informed by Miriam Varelalizardi (Paralegal, Competition Bureau Legal Services), and verily believe, that **Exhibit "F"** is a true copy of the letter dated July 26, 2022.

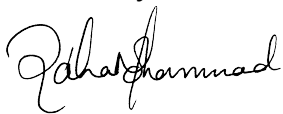
17. In his letter, Rogers' counsel contested that Rogers was required to provide the information fields listed in paragraphs 6 and 8 of this

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affidavit. Nevertheless, Rogers' counsel attached a revised privilege list that he states includes updated document titles, parent/child relationship, document author, and CC fields. Furthermore, Rogers' counsel advised that "Rogers will provide a coding overlay for its last two productions with the requested fields: custodians, CC, BCC, electronic file name and MD5 hash values. The coding overlay will be uploaded to the secure file site shortly and transmitted by secure email." I am informed by Miriam Varelalizardi (Paralegal, Competition Bureau Legal Services), and verily believe, that **Exhibit "G"** is a true copy of the revised privilege list.

18. With respect to the privilege claims challenged in the letter dated July 26, 2022, Rogers' counsel alleged only 4,466 do not list counsel as a recipient, sender, or author and reiterated the validity of its privilege claims over these documents. Rogers' counsel also disagreed with the Commissioner's request for further details on privilege claims made by Rogers over documents that appear from their titles to be documents created in the ordinary course of business.
19. With respect to the [REDACTED], Rogers counsel stated that "It is unclear what document the Commissioner believes exists and is not contained in the production."
20. With respect to the documents listed in Schedule "A" to this affidavit, Rogers' counsel advised in his letter that they have asked document authors to provide the passwords and Rogers will send the passwords to the Commissioner as soon as they become available.
21. As of the date of this affidavit, the Commissioner continues to review the revised privilege list attached to the letter from Rogers' counsel dated July 28, 2022.

AFFIRMED remotely by Kevin McWhinnie of the City of Toronto in the Province of Ontario, before me at the City of Gatineau, in the Province of Quebec, on July 28, 2022, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.



Kevin McWhinnie

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Schedule "A"

1. ROG00686395	42.ROG00700611
2. ROG00687305	43.ROG00700812
3. ROG00688852	44.ROG00700821
4. ROG00697701	45.ROG00700886
5. ROG00698392	46.ROG00701054
6. ROG00698498	47.ROG00701056
7. ROG00698560	48.ROG00701171
8. ROG00698581	49.ROG00701432
9. ROG00698671	50.ROG00701433
10.ROG00698836	51.ROG00701434
11.ROG00698912	52.ROG00701451
12.ROG00699018	53.ROG00701599
13.ROG00699188	54.ROG00701768
14.ROG00699288	55.ROG00701769
15.ROG00699351	56.ROG00701770
16.ROG00699561	57.ROG00701771
17.ROG00699562	58.ROG00701772
18.ROG00699563	59.ROG00701773
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312.	ROG00824695		

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the
Commissioner of Competition for one or more
orders pursuant to section 92 of the
Competition Act, RSC 1985, c C-34.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

**ROGERS COMMUNICATIONS INC.
SHAW COMMUNICATIONS INC.**

Respondent

AFFIDAVIT OF KEVIN MCWHINNIE

This is **Exhibit "A"** to the affidavit of Kevin McWhinnie, affirmed remotely by Kevin McWhinnie stated as being located in the city of Toronto in the province of Ontario, before me at the city of Gatineau in the province of Quebec, on July 28, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. of Shaw Communications Inc.; and

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

Discovery Plan

(June 28, 2022)

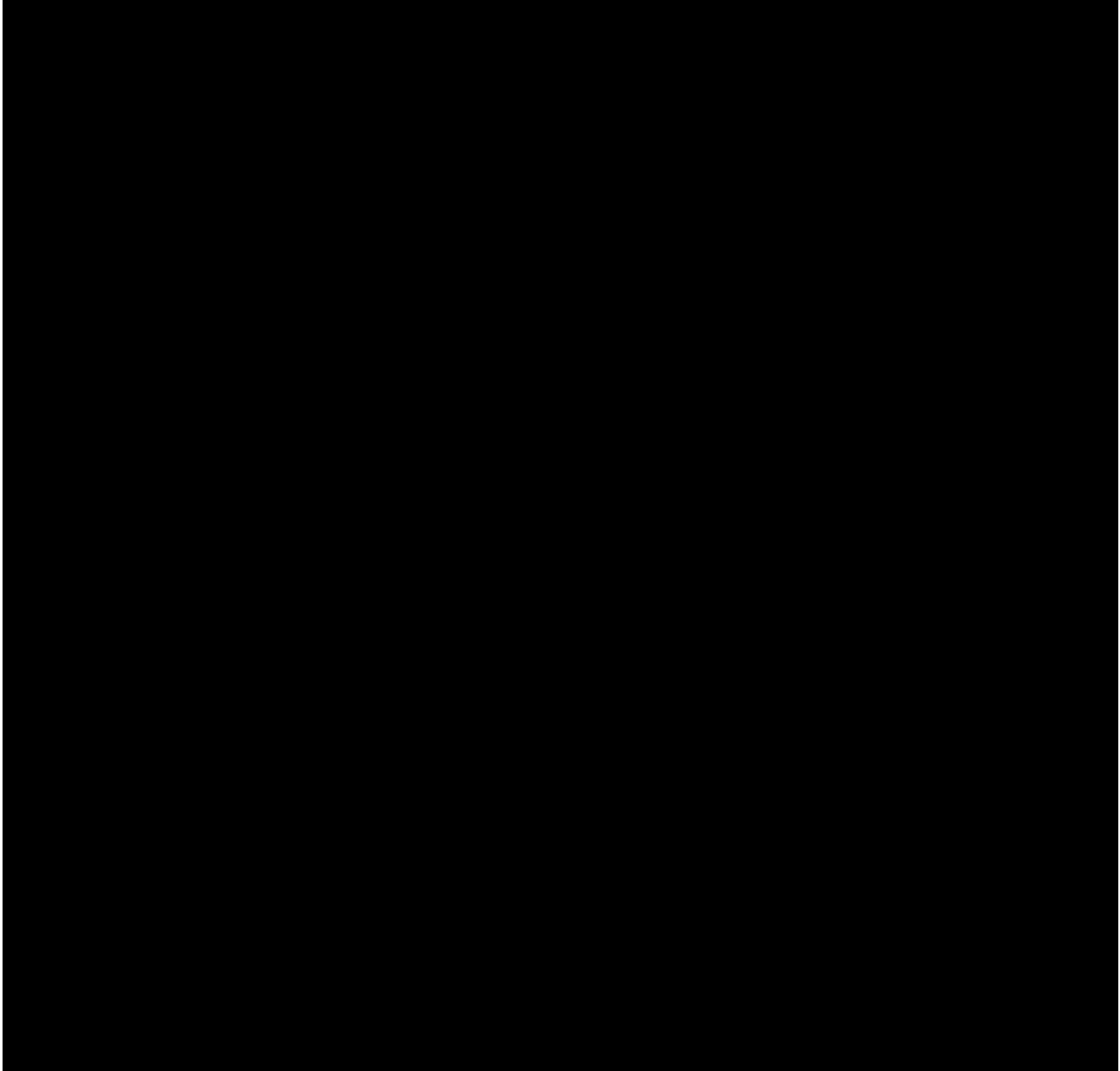
A. GENERAL

1. The parties to this Discovery Plan (the “**Discovery Plan**”) are the Applicant, the Commissioner of Competition (the “**Commissioner**”), and the Respondents, Rogers Communications Inc. (“**Rogers**”) and Shaw Communications Inc. (“**Shaw**”).
2. This Plan sets out the agreement reached by the Commissioner, Rogers and Shaw (the “**Parties**”, and each individually a “**Party**”) concerning certain matters relating to documentary discovery and oral discovery for the purposes of this proceeding.

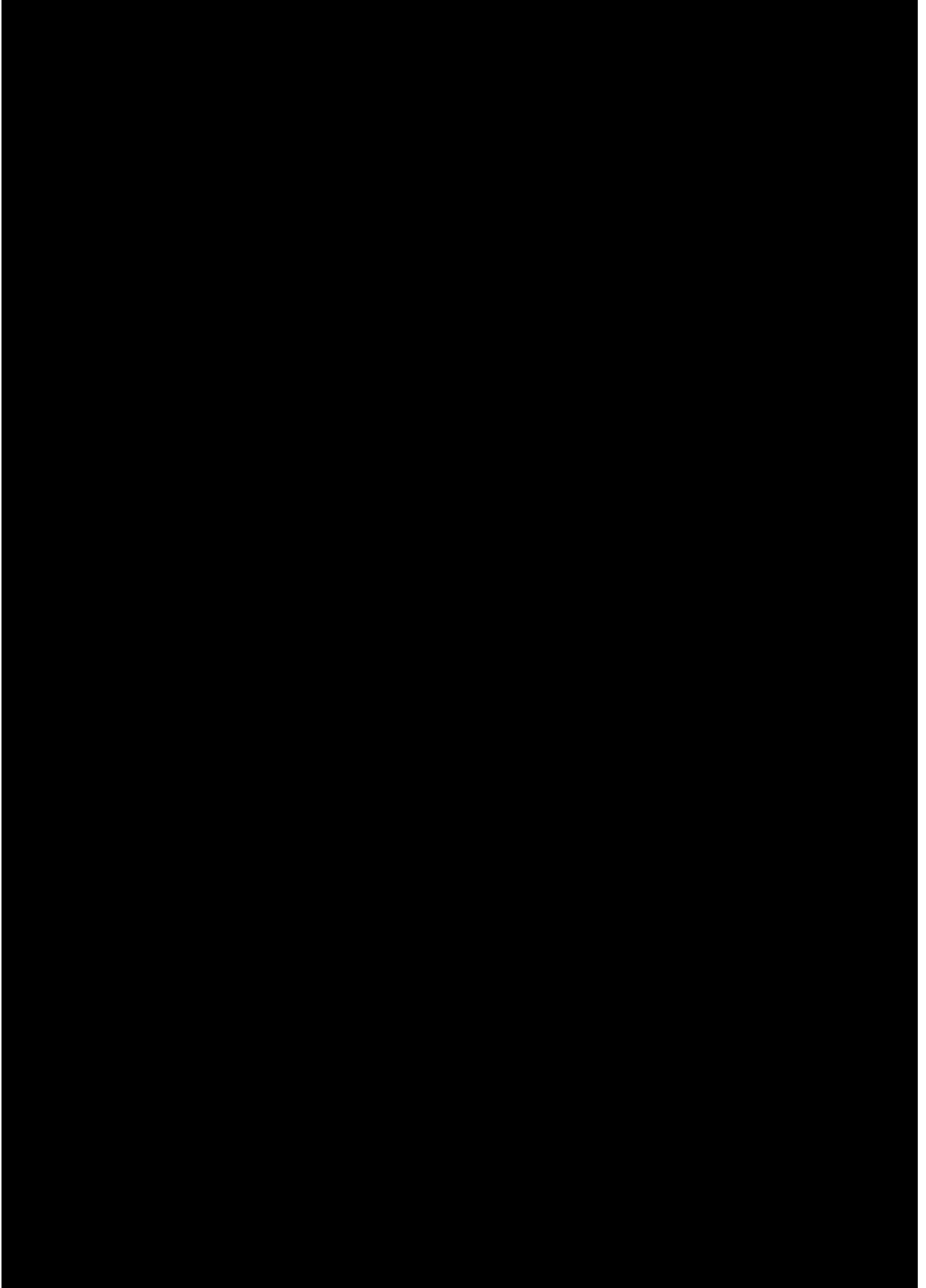
3. Except as provided herein, nothing in this Discovery Plan derogates from: (i) the legal rights of the Parties with respect to documentary and oral discovery in this proceeding; or (i) the right of any Party to move before the Competition Tribunal for enforcement of those rights and nothing in this plan affects the legal obligations of each party to take reasonable steps to preserve relevant documents.
4. For the purposes of this Discovery Plan, “document” includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy or portion of that material. For greater certainty, a document includes any email or other correspondence, mobile phone text messages, and messages using third party messaging applications.
5. Any Party may make a motion to the Tribunal: (i) to compel another Party to take the steps contemplated by the Discovery Plan; or (ii) relating to any other discovery-related issue. Subject to the *Competition Tribunal Rules*, the *Practice Direction Regarding Timelines and Scheduling for Proceedings before the Tribunal*, and the *Practice Direction Regarding an Expedited Proceeding Process before the Tribunal*, the Parties agree that on any such motion, they will adhere to the following procedures:
 - a. Prior to bringing a motion contemplated in this section, a Party shall first make good faith efforts to resolve or limit the issues in dispute by holding a meeting or a telephone conference with the other Parties.
 - b. The Tribunal may take the existence of this Discovery Plan, and the extent to which the Parties have complied with it, into account in determining whether to grant the order sought.
 - c. Any responding Party on such a motion may seek to justify its non-compliance with the Discovery Plan on the basis of, among other things, any information that was unknown or unavailable to the Party at the time this Discovery Plan was entered into.

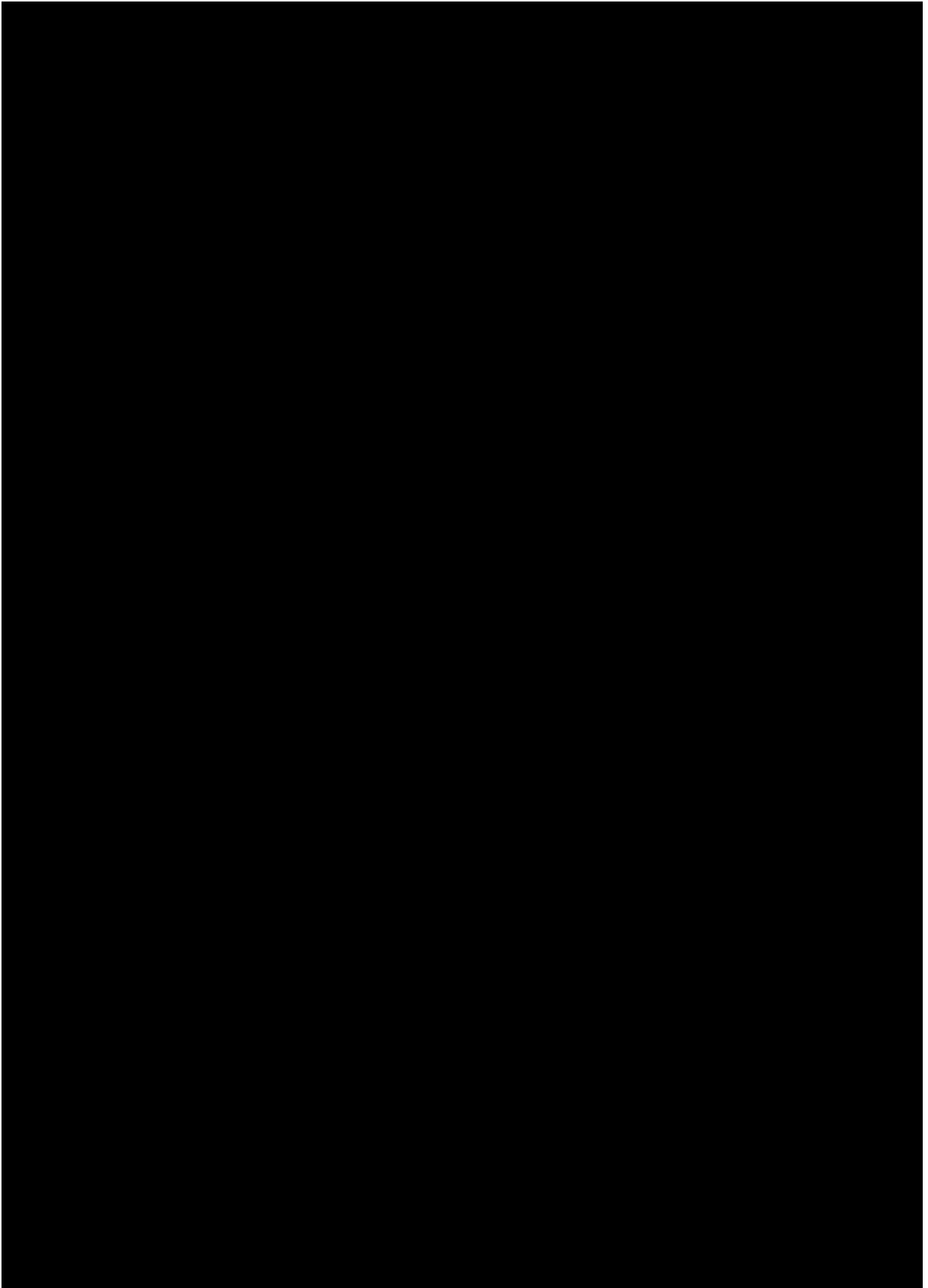
6. The definitions set out in the Supplementary Information Requests issued to Rogers and Shaw herein shall apply to this document.

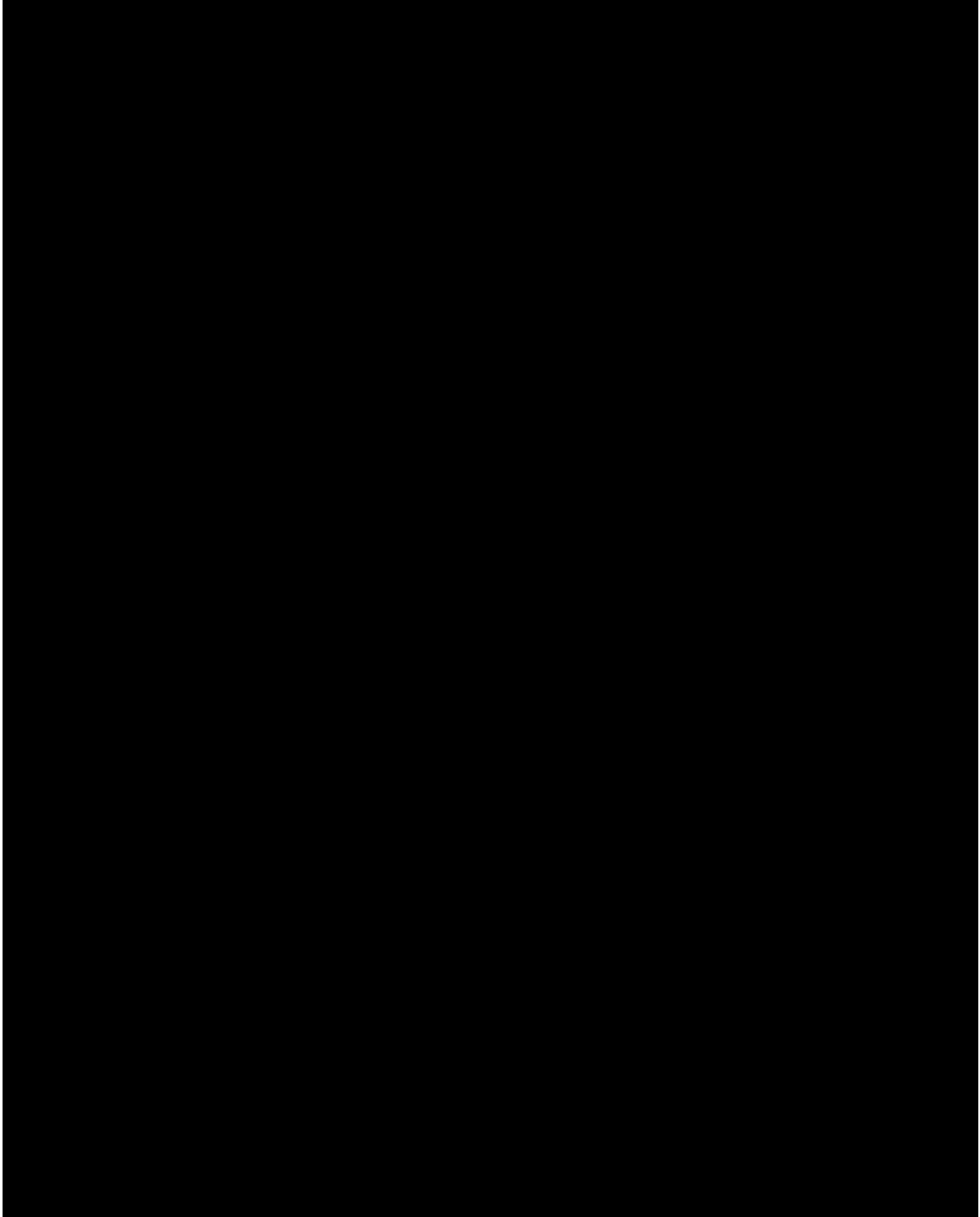
B. SCOPE OF DOCUMENT DISCOVERY



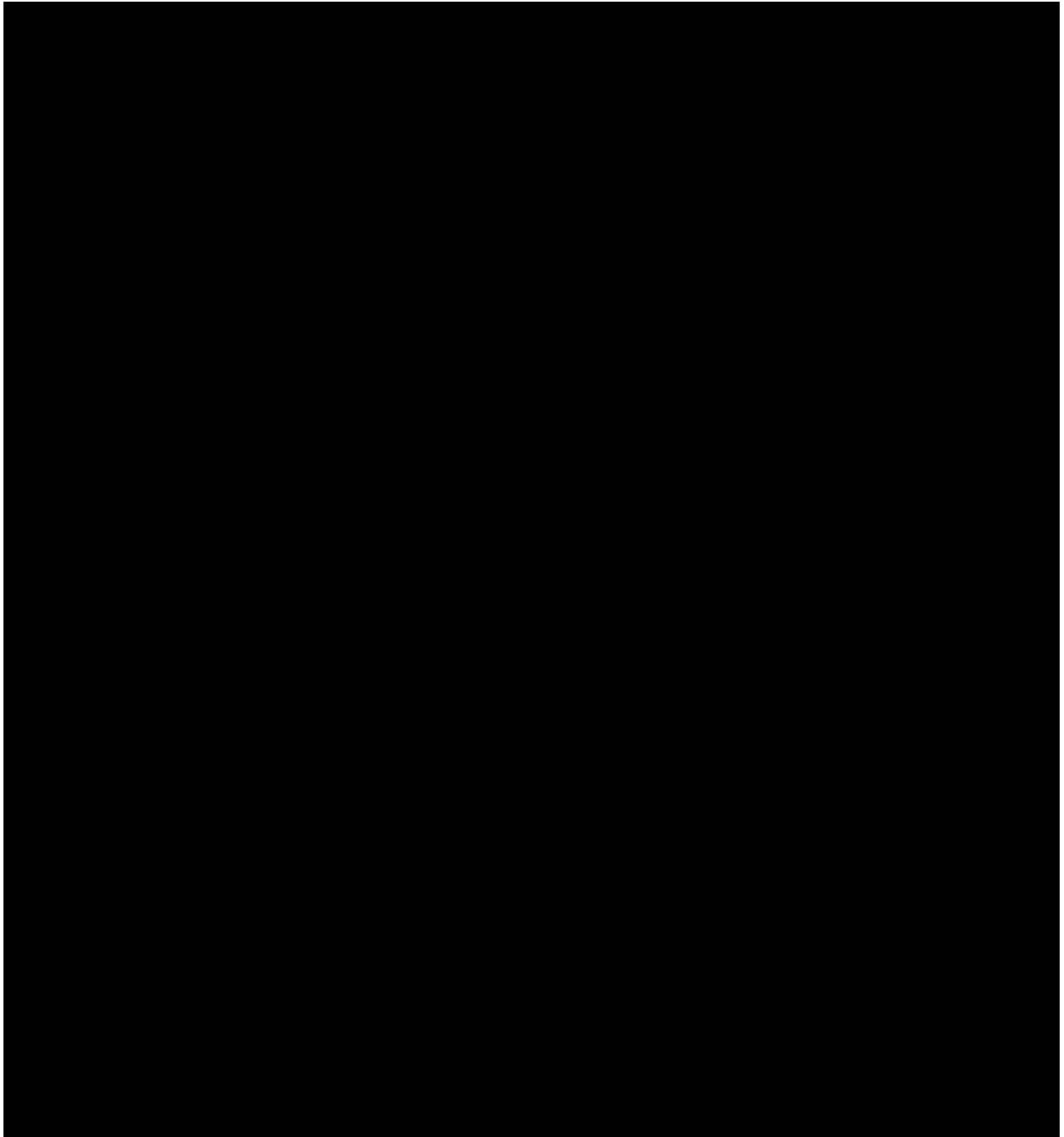
¹ The Parties acknowledge and agree that this request relates to the documents of Rogers only, and that Shaw shall not be required to search for such documents or train its TAR algorithm to identify such documents as responsive.







² The Parties acknowledge and agree that this request relates to the documents of Rogers only, and that Shaw shall not be required to search for such documents or train its TAR algorithm to identify such documents as responsive.



8. Rogers and Shaw shall discharge their obligations under paragraph 7 of this Discovery Plan by applying search terms and using technology-assisted review processes to identify documents that may be relevant to the issues in dispute. The technology-assisted review will be conducted in a manner consistent with practices used to identify documents responsive to the SIR issued to the Respondent on June 3, 2021. The agreed upon search terms are listed in Schedule "A", and the agreed upon custodians are set out immediately below.

Shaw Custodians	
1	Adel Awad – VP, Wireless Network Quality & Operations
2	Brad Shaw – Chief Executive Officer
3	Brian O'Shaughnessy – Senior Vice President Wireless & 5G Technology
4	Candice McLeod - Senior Vice President, Enterprise Business Solutions
5	Dale Turner - Vice President Marketing, Pricing and Packaging
6	Damian Poltz - SVP, Wireline Technology & Strategy
7	Dan Sumner - Vice-President, Customer Base Management / Marketing
8	Feiber Omana - SVP, Corporate Dev & Strategic Planning
9	Jay Gardner -VP, Product Management
10	Katherine Emberly - President, Business
11	Linda Thomas - SVP, Commercial Finance
12	Magued Sorial – VP, Wireless Network Engineering
13	Mathew Flanigan – VP, Wireless Growth
14	Pat Button - SVP Sales & Distribution
15	Paul Deverell - President, Consumer
16	Paul McAleese – President
17	Rob Myatt - VP, Enterprise Service Provider & Carrier Solutions
18	Tamer Morsy Saleh - SVP, Technical & CTO, Freedom
19	Trevor English - EVP, Chief Financial & Corporate Development Officer
20	Zoran Stakic -Chief Operating Officer & Chief Technology Officer

Rogers Custodians	
1	Aimee Debow – Sr. Director Strategy, Planning, Governance and Service Communications
2	Alexander Brock – SVP Strategy & Partnership
3	Anthony Staffieri – President & CEO
4	Bart Nickerson – SVP Marketing
5	Chris Smale - VP, Customer Base Management & (Former) VP Wireless Pricing
6	Christine Pop - Vice President, Wholesale Solutions

Rogers Custodians	
7	Cory Watson – Sr. Director, Network Technology Integration
8	Daniel Golberg – SVP Strategy and Corporate Development
9	David Fuller – President Wireless Services
10	Dean Prevost – President, Integration
11	Delia Pan – VP Customer Base Management
12	Drew Stevenson - Vice President, Brand
13	Eric Bruno – SVP, 5G, Content & Connected Home Products
14	Glenn Brandt – (Former) SVP Development
15	Joe Natale – (Former) President & CEO
16	John Mallovy, VP, Corporate Real Estate
17	Jorge Fernandes - Chief Technology Information Officer
18	Julie Gass – Marketing Director of Cross-Sell
19	Kye Prigg – SVP Access Networks and Operations
20	Lawrence Shum – Sr. Director, Shaw Integration
21	Lisa Shanoff - Director/Business Owner Fido Retention, Agile Marketing
22	Luciano Ramos - SVP Network Development & Core Engineering
23	Mahes Wickramasinghe – Chief Administration Officer
24	Marisa Fabiano – SVP Integration Lead
25	Matthew MacLellan - Integration Management Office
26	Mehrzad Ghassemi – VP Customer Base Management
27	Nancy Audette
28	Paul Carpino – VP of Investor Relations
29	Philip Hartling – President, Wireless Services
30	Sandra Pasquini – SVP HRBP Consumer & Talent Acquisition
31	Shailendra Gujarati – VP Prepaid
32	Shannon Bell, SVP, Information Technology
33	Simone Lumsden, SVP CMO, Wireless Services
34	Upinder Saini – SVP Product & Device
35	Vedran Petrusic – Sr. Dir. Wireless Pricing

9. Each Respondent shall provide the Commissioner with complete responses to the questions his counsel sent them on June 21, 2022 relating to its use of technology-assisted review. Questions 1-6 and 11-13 have been answered as of the date of this Plan and answers to questions 7-10 shall be a provided together with the AOD that is to be served on July 15, 2022.
10. The Commissioner shall list in his AOD that that will be served on July 15, 2022 relevant privileged and non-privileged records falling into the following subject areas:
 - a. documents relating to Proposed Transaction as it relates to Wireless Services, including, without limitation, all documents provided to the Commissioner by the Respondents or by other industry participants;
 - b. complaints, comments, reactions and feedback received by the Bureau in relation to the Proposed Transaction;
 - c. requests for information, production orders and/or subpoenas issued by the Bureau in connection with the Proposed Transaction and all responses received by the Bureau in relation thereto;
 - d. notes, transcripts and other records of meetings, interviews and/or examinations conducted with or of industry participants or other third parties, and documents pertaining to such meetings, interviews and/or examinations;
 - e. communications between the Bureau and industry participants or other third parties, and documents pertaining to such communications, to the extent not covered by subparagraph 10(d); and
 - f. documents relating to the Bureau's communications with any enforcement or regulatory agency or industry association, including the Canadian Radio-television and Telecommunications Commission and Innovation, Science and Economic Development Canada, in relation to the Proposed Transaction.
11. With respect to the production of electronically stored information ("**ESI**"), the Parties agree to follow the Competition Bureau's Enforcement Guidelines with respect to Production of Electronically Stored Information.

C. AFFIDAVITS OF DOCUMENTS AND DOCUMENT PRODUCTIONS

12. AODs shall be exchanged by July 15, 2022.
13. In conjunction with and at the same time as the delivery of their AODs, the Parties shall produce a list of documents over which they assert privilege ("**Privilege List**"). The list will identify the asserted privilege.
14. AODs and Privilege Lists shall list each document produced or withheld and the following information:
 - a. DOCID
 - b. DOCDATE
 - c. DOCTITLE
 - d. AUTHOR
 - e. TO
 - f. FROM
 - g. DOCTYPE
 - h. CONFIDENTIALITY LEVEL
15. Unless otherwise challenged not later than 60 days before trial, the Parties admit that all producible documents exchanged between them are authentic for purposes of the *Canada Evidence Act*. Where documents lack the necessary identifying information to establish the authenticity of the document, the Parties agree to provide the necessary identifying information, if available, in writing, within 30 days upon request. For greater certainty, the Parties admit the authenticity of any such document based on the identifying information that is provided.
16. Unless otherwise challenged not later than 60 days before trial, the Parties admit the integrity of all producible documents exchanged between them for purposes of complying with the best evidence provisions set out in section 31.2 of the *Canada Evidence Act*.
17. The Parties agree that in the event any privileged document(s) or any irrelevant confidential document(s) are inadvertently included in the productions of a Party, neither the listing of such document(s) nor the production of the actual document(s) will constitute, as the case may be, a waiver of privilege or a waiver of confidentiality over the document(s) or its subject matter.

18. If a Party inadvertently produces a document that is privileged, it will provide notice of such to the other Parties within 7 days of learning of the inadvertent production. If a Party receives a document that appears to that Party to be privileged, it will notify the Party that produced the document within 7 days of becoming aware that the document appears to be privileged. Regardless of how an inadvertently produced privileged document comes to light, all copies of such a document (either electronic or otherwise) will be deleted or destroyed by the Party or Parties to which the document was inadvertently produced immediately upon receipt of a notice described above, or upon discovery by that Party of the privileged document to the extent technically feasible, and if not feasible the Parties shall make arrangements for the return and replacement of the electronic or other medium which cannot be deleted or destroyed. The destruction of an inadvertently produced privileged document will include the deletion of any associated OCR, extracted text, notes and work product made in relation to the inadvertently produced privilege document. Further, the media on which the inadvertently produced privilege document was produced will also be returned to the producing Party to the extent the receiving Party still possesses such media.
19. Should a Party dispute a claim of privilege made by another Party under paragraph 18, the Party disputing the privilege must still comply with paragraph 18, but shall give notice of their dispute to the Party that produced the document within 30 days of the initial notice describe in paragraph 18. The Party disputing the privilege will make the appropriate motion to the Tribunal to have the matter adjudicated.
20. A Party that has received an inadvertently produced document shall not rely on or otherwise use in any way any privileged information learned from such document; but for greater certainty, nothing in this paragraph shall be interpreted as an agreement to extend a privilege to facts having an independent existence of a privileged communication.
21. After serving their respective AODs on July 15, 2022, the Parties shall comply with their continuing production obligations.
 - a. To the extent that a Party discovers additional non-privileged documents that are relevant to a matter at issue in this proceeding, the Party shall produce said documents to the other Parties within 7 days after becoming aware of them.

- b. For greater certainty, paragraphs 15 and 16 of this Discovery Plan shall apply to any documents produced in accordance with subparagraph 21(a) hereof. To the extent that such documents are produced less than 60 days before trial, the Parties shall promptly agree upon the date by which the challenges contemplated by paragraphs 15 and 16 must be made, and failing such agreement shall immediately seek direction from the Tribunal.
- c. To the extent that additional documents are produced in accordance with subparagraph 21(a), each producing Party shall deliver a supplementary AOD. Any supplementary AOD will include the information set out in paragraph 14 of this Discovery Plan.
- d. Any Party may, in examining for discovery the representative of another Party, request production of additional documents or categories of documents.

D. ORAL DISCOVERIES

- 22. Examinations for discoveries shall be completed between August 15 and 26, 2022 and shall be conducted virtually.
- 23. A member of Rogers' Executive Leadership Team, to be identified by Rogers, shall be examined on behalf of Rogers, which examination shall be limited to no more than 2 days.
- 24. A member of Shaw's Executive Leadership Team, to be identified by Shaw, shall be examined on behalf of Shaw, which examination shall be limited to no more than 2 days.
- 25. A competition law officer shall be examined on behalf of the Commissioner, which examination shall be limited to no more than 2 days.
- 26. Each Party shall provide answers to undertakings given during the examination for discovery of its representative witness within 10 days after the date on which the examination for discovery in question is completed.
- 27. Any motions arising from examinations for discovery shall be brought by September 7, 2022.

28. Any follow-up examinations for discovery shall be completed by September 16, 2022.

PREPARED AND AGREED UPON BY:

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Competition Bureau Legal Services
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Gatineau, QC J8X 3X1
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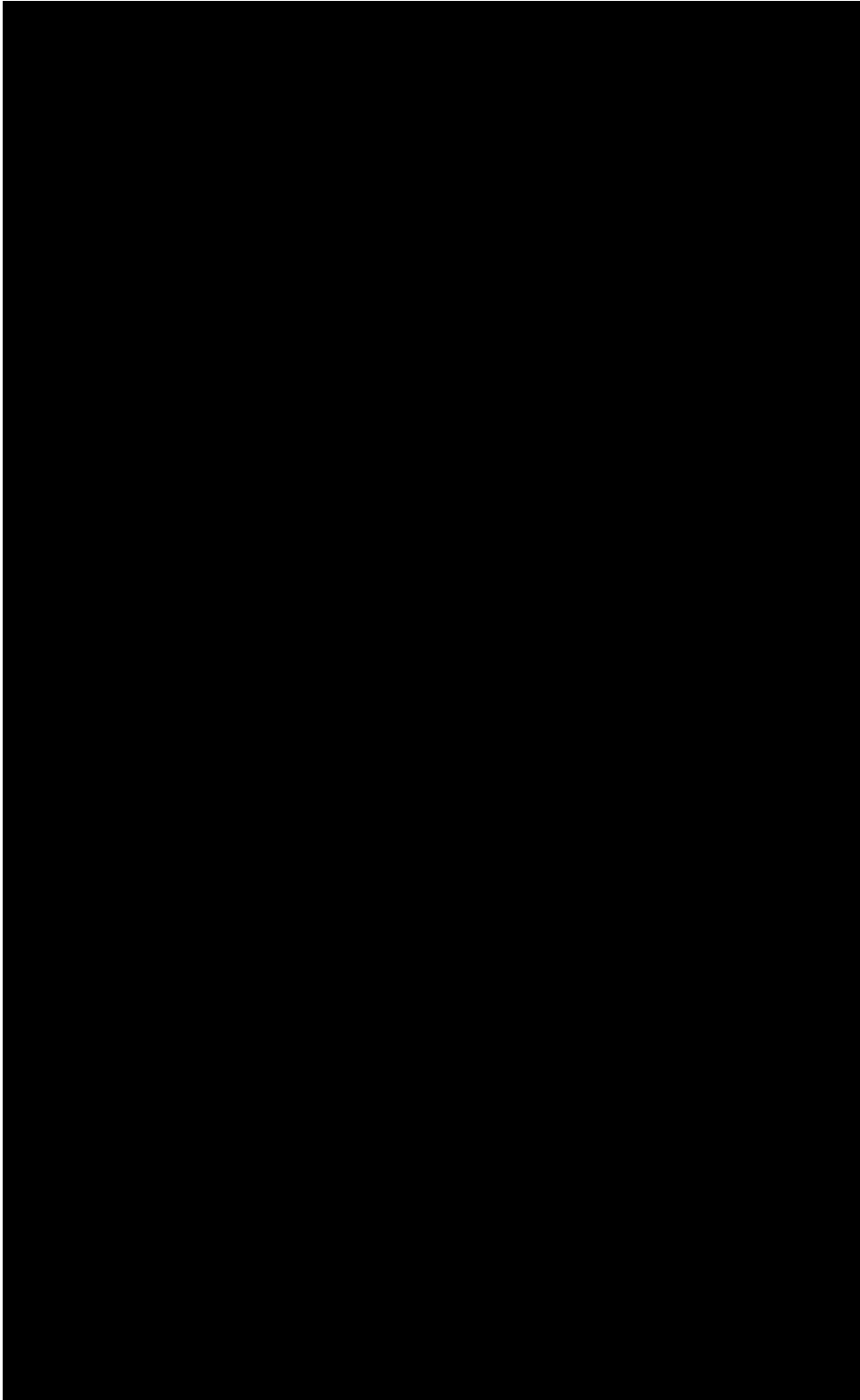


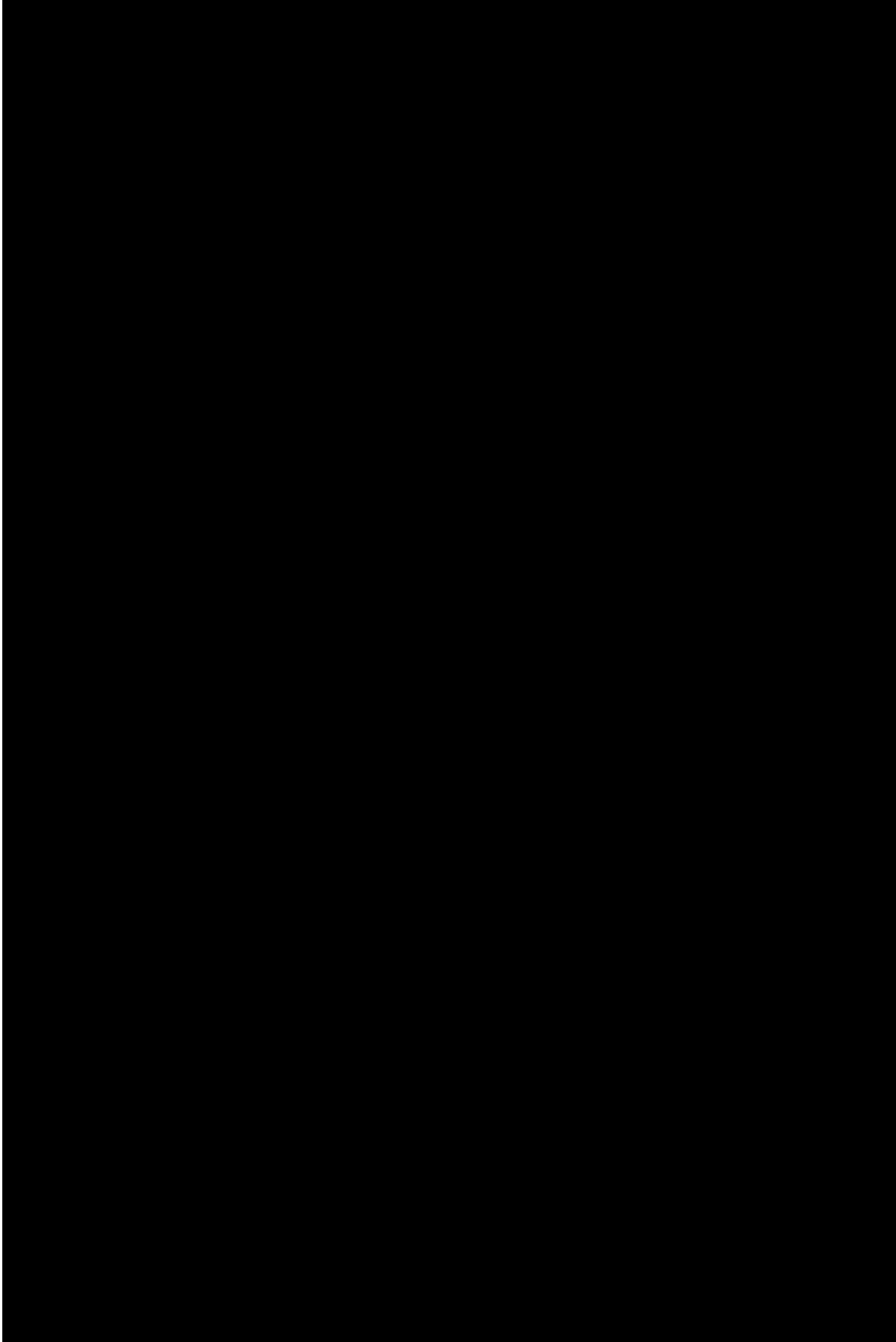
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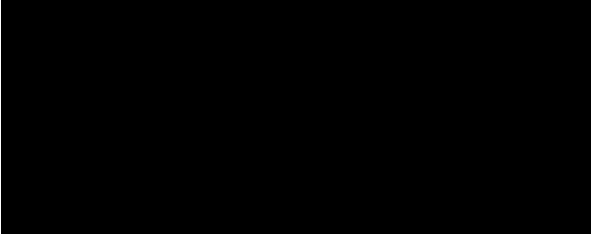
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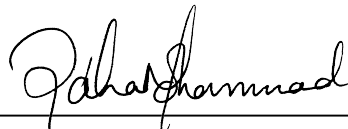
Schedule "A"





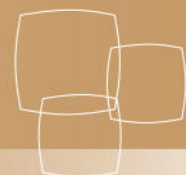


This is **Exhibit “B”** to the affidavit of Kevin McWhinnie, affirmed remotely by Kevin McWhinnie stated as being located in the city of Toronto in the province of Ontario, before me at the city of Gatineau in the province of Quebec, on July 28, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.



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Production of Electronically Stored Information



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Aussi offert en français sous le titre Production de renseignements stockés électroniquement.

PREFACE

The Competition Bureau (the “Bureau”), as an independent law enforcement agency, ensures that Canadian businesses and consumers prosper in a competitive and innovative marketplace. The Bureau investigates anti-competitive practices and promotes compliance with the laws under its jurisdiction, namely the *Competition Act* (the “Act”), the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act*.

The Bureau has issued these guidelines for the Production of Electronically Stored Information (“ESI”) to promote the efficient processing and review of any electronic production received by the Bureau and to resolve any details before parties collect and produce responsive records. Transparency regarding the Bureau’s preferences for receiving ESI improves predictability and helps producing parties make informed decisions. These guidelines reflect the Bureau’s current preferences based on existing technologies used by the Bureau to process and review ESI and will be updated, as required, where the Bureau adopts new or different technologies.

John Pecman

Commissioner of Competition

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I. INTRODUCTION

These guidelines for the production of electronically stored information (“ESI”) set out the Competition Bureau’s (the “Bureau”) preferred formats for receiving ESI produced in response to compulsory processes and, in certain instances, produced voluntarily in the course of an inquiry or investigation under the *Competition Act* (the “Act”).

The Bureau continuously strives to carry out its mandate in the most efficient and effective means possible. The receipt of ESI in a format set out below will assist the Bureau in achieving that objective through the reduction of processing and reviewing times and will avoid unnecessary costs and delays associated with unusable productions. Early and regular communication among the Bureau, producing parties and their counsel regarding production methodologies and formats is encouraged. Given the technical nature of the subject matter, it is also beneficial to involve persons with the requisite technical expertise, whether in-house or those of a third-party service provider, when using these guidelines, including participating in discussions with Bureau representatives regarding the production of ESI.

These guidelines reflect the Bureau’s current preferences based on existing technologies used by the Bureau to process and review ESI and will be updated, as required, where the Bureau adopts new or different technologies.

These guidelines do not address the type or scope of information that may be required or requested by the Bureau in the course of an inquiry or an investigation, nor do they address the Bureau’s preferred practices regarding the production of non-electronic records or other things, except where those records are converted to ESI.



2. APPLICABILITY OF THE GUIDELINES

The Bureau generally seeks production in accordance with these guidelines when seeking a court order under section 11 of the Act or under the *Criminal Code*. Further, the Bureau expects that producing parties will adhere to these guidelines in the following instances:

- responding to a supplementary information request issued under subsection 114(2) of the Act;
- submitting a production pursuant to participation in the Bureau’s Immunity or Leniency Programs; and
- submitting information voluntarily.

In this regard, a copy of the guidelines will generally be incorporated in or appended to an order or request for information.



3. ONGOING COMMUNICATION

Bureau staff will contact producing parties shortly following the issuance of an order or request for information to which these guidelines apply and will be available for ongoing dialogue regarding the production of ESI.

Producing parties, together with their technical staff and/or third-party service provider, are strongly encouraged to speak with Bureau staff (case officers and technical staff) prior to collecting and prior to producing ESI to discuss production details, including the manner in which ESI is stored, the types of information that are available on the electronic source and the format of production.



4. TECHNICAL INSTRUCTIONS

- 4.1 All ESI (i.e., information readable in a computer system) should be produced free of computer viruses or malware, be accessible, readable and printable, and be devoid of passwords or encryption.
- 4.2 All ESI should be produced in its original electronic format (i.e., native format), except where near-native format is required by subsections 4.3.2 or 4.6 or where an image production is produced as per subsection 4.8. Detailed instructions are set out in Schedule A for production using computer systems without application export capabilities and in Schedule B for production using litigation application exports. The Bureau's preference is to receive ESI in accordance with Schedule B.
- 4.3 Where a record being produced is part of a family, all parent and child records should be produced and the parent/child relationship should be preserved. A family is a collection of pages or files produced manually or by a software application, constituting a logical single communication of information, but consisting of more than one single stand-alone record. Examples include:
 - 4.3.1 a fax cover, the faxed letter, and an attachment to the letter, where the fax cover is the parent and the letter and attachment are each a child.
 - 4.3.2 email repositories (e.g., Outlook .PST, Lotus .NSF) can contain a variety of records, including messages, calendars, contacts, and tasks. For purposes of production, all parent records, both native (e.g., documents, spreadsheets, presentations) and near-native email, calendar, contacts, tasks, notes and child records (e.g., object linking and embedding items and attachments of files to emails or to other parent records) should be produced, with the parent/child relationship preserved. Similar items found and collected outside an email repository (e.g., .MSG, .EML, .HTM, .MHT) should be produced in the same manner; and

- 4.3.3 archive file types (e.g., .zip, .rar) should be uncompressed for processing. Each file contained within an archive file should be produced as a child to the parent archive file. If the archive file is itself an attachment, that parent/child relationship should also be preserved.
- 4.4 Hard copy or paper records produced as ESI should be produced as single page TIFF images with a resolution of 300 dpi (dots per inch) and OCR generated text. The records should be produced as they are kept, reflecting attachment relationships between records and information about the file folders within which the record is found. Where colour is required to interpret the record, such as hard copy photos, and certain charts, that image should be produced in colour. These colour images are to be produced as .jpg format. Hard copy photographs should be produced as colour .jpg, if originally in colour, or greyscale .tif files if originally in black and white.

The following bibliographic information, if it is available, should also be provided for each record:

- a. document ID
 - b. date
 - c. author / author organization
 - d. recipient / recipient organization
- 4.5 The records produced should be indexed as being responsive to the applicable paragraphs or subparagraphs in the [Order/Request].
 - 4.6 Each database record submitted in response to a paragraph or subparagraph of the [Order/Request]:
 - 4.6.1 should be produced whole, in a flat file, in a non-relational format and exported as a delimited text file where fields are separated by the pipe character (|) and a caret (^) is used as the text qualifier (e.g. ^Field1 ^ | ^Field2 ^ | ^Field3 ^ etc.); and
 - 4.6.2 should include a list of field names; a definition for each field as it is used by the producing party, including the meanings of all codes that can appear as field values; the format, including variable type and length, of each field; and the primary key in a given table that defines a unique observation.
 - 4.7 With regard to de-duplication:
 - 4.7.1 for investigations relating to Part VI of the Act, all copies of records should be provided; and

- 4.7.2 for investigations relating to Parts VII.1 and VIII of the Act, the producing party may use de-duplication or email threading software if the producing party provides the Bureau with a written description of the proposed process to be used, including what is considered a duplicate, and the Bureau confirms that the deployment of such process permits the producing party to comply fully with the [Order/Request].
- 4.8 Documents requiring redaction pursuant to any claim of privilege should be produced as single-page TIFF or multi-page PDF images and designated “Redacted” in the field as described in Schedule B. Appropriately redacted searchable text (OCR of the redacted images is acceptable), metadata, and bibliographic information must also be provided. All documents that are part of a document family that includes a document withheld pursuant to any claim of privilege will be designated “Family Member of Privileged Doc” in the field as described in Schedule B for all other documents in its family. Placeholder images with BEGDOC#, FILENAME, FILEPATH and reason withheld (e.g., “Privileged”) should be provided in place of the document images of the privileged document.
- 4.9 All ESI should be provided on portable storage media appropriate to the volume of data (e.g., USB/flash drive, CD, DVD, hard drive) and should be identified with a label setting out the matter name, the contents and the date of production. Each medium should contain no more than 250,000 files (e.g., native ESI or images or a combination of both).
- 4.10 In the event that ESI is delivered in a format that is not one of the formats set out in Schedule A or Schedule B, the ESI should be provided along with all available instructions and other materials, including software, as necessary for the retrieval and use of the ESI (subject to any software licensing restrictions, which the producing party and the Bureau should discuss in advance of production).



HOW TO CONTACT THE COMPETITION BUREAU

Anyone wishing to obtain additional information about the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act*, the *Precious Metals Marking Act* or the program of written opinions, or to file a complaint under any of these acts should contact the Competition Bureau's Information Centre:

Website

[www.competitionbureau.gc.ca]

Address

[Information Centre
Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9]

Telephone

[Toll-free: 1-800-348-5358
National Capital Region: 819-997-4282
TTY (for hearing impaired) 1-800-642-3844]

Facsimile

[819-997-0324]



SCHEDULE A

Computer Systems with No Application Export Capabilities

1. ESI generated by office productivity suite software should be produced in its native format.
2. Emails should be produced in their near-native format. Where an email has attachments, the attachments should be left embedded in the native file and not extracted separately.



SCHEDULE B

Litigation Application Exports

1. A load file (e.g., Opticon (OPT), IPRO (LFP), Summation (DII) or Ringtail (MDB)) and all related ESI should be produced in native format except where near-native format is required by subsections 4.3.2 and 4.6.
2. Within the delimited metadata file where fields are separated by the pipe character (|) and a caret (^) is used as the text qualifier (e.g. ^ Field1 ^ | ^ Field2 ^ | ^ Field3 ^ etc.), and depending on the nature of the ESI, the following fields should be provided:

DOCID
 BEGDOC
 ENDDOC
 BEGATTACH
 ENDATTACH
 FILEPATH
 PARENTBATES (bates number of parent record)
 CHILDBATES (bates number(s) of any child records)
 MD5HASH (MD5HASH of the native format ESI)
 TEXTPATH (link to extracted text on the production media for tiffs only)
 NATIVEPATH (link to any files produced in native or near-native format on the production media)
 CUSTODIAN
 ALLCUSTODIAN
 TO
 FROM
 AUTHOR
 CC
 BCC
 SUBJECT/TITLE
 FILENAME
 DOCDATE
 DATESENT

TIMESENT
DATECREATED
TIMECREATED
DATELASTMOD
TIMELASTMOD
DATEACCESSED
TIMEACCESSED
SPECIFICATION
FILEEXTENSION
REDACTED
FAMILYMEMBERPRIVILEGEDDOC

3. The ESI produced should be indexed by using the 'SPECIFICATION' field as being responsive to the paragraphs or subparagraphs in the [Order/Request]. If multiple values exist for the specification, they should be separated by a semi-colon (e.g. 1a;1b;2a, etc.).

This is **Exhibit "C"** to the affidavit of Kevin McWhinnie, affirmed remotely by Kevin McWhinnie stated as being located in the city of Toronto in the province of Ontario, before me at the city of Gatineau in the province of Quebec, on July 28, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

Bradley Vermeersch

Direct 416 646 7997
bvermeersch@lolg.ca

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Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730
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Lax
O'Sullivan
Lisus
Gottlieb

July 15, 2022

BY EMAIL

Derek Leschinsky
Competition Bureau Legal Services
Department of Justice Canada
Place du Portage, Phase I, 22nd floor
50 Victoria Street
Gatineau, QC K1A 0C9

Derek Ricci, Kent Thomson and Steven Frankel
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Dear Counsel:

Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc. (CT-2022-022)

Please find enclosed for service Rogers' affidavit of documents, pursuant to the discovery plan dated June 28, 2022.

You will receive an invitation to access a secure file transfer site, which contains a Relativity load file and the Schedule A and B that accompany the affidavit of documents.

The password for the load file is: [REDACTED]

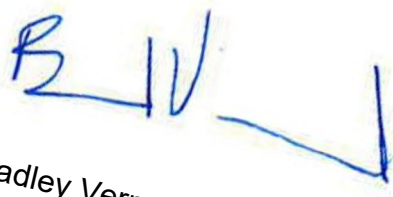
Rogers designates the data that was produced by Rogers on July 29, 2021 and July 11, 2022 as Confidentiality Level B.

Rogers has not completed a review of the confidentiality designations of documents that were produced in response to the Commissioner's Supplementary Information Request to Rogers dated June 3, 2021 or documents voluntarily provided by Rogers to the Commissioner. Rogers intends to designate all documents as Confidentiality Level B except documents related to wireless spectrum auctions, which will be designated as Confidentiality Level A. Rogers will provide a further update regarding those specific designations when it completes its confidentiality review.

PUBLIC
- 2 -

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Yours truly,

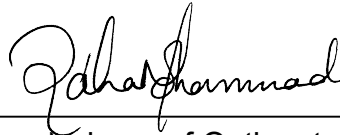


Bradley Vermeersch

BV/ep
Encl.

cc: John Tyhurst, Katherine Rydel, Jasveen Puri, Ryan Caron, Kevin Hong, Darian Bakelaar and Miriam
VarelaLizardi, *Competition Bureau Legal Services*
Jonathan Lissus, Crawford Smith and Matthew Law, *Lax O'Sullivan Lissus Gottlieb LLP*

This is **Exhibit "D"** to the affidavit of Kevin McWhinnie, affirmed remotely by Kevin McWhinnie stated as being located in the city of Toronto in the province of Ontario, before me at the city of Gatineau in the province of Quebec, on July 28, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

This is **Exhibit "E"** to the affidavit of Kevin McWhinnie, affirmed remotely by Kevin McWhinnie stated as being located in the city of Toronto in the province of Ontario, before me at the city of Gatineau in the province of Quebec, on July 28, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.



Ministère de la Justice
Canada

Department of Justice
Canada

Bureau de la concurrence
Services juridiques

Competition Bureau
Legal Services

Place du Portage, Tour I
22e étage
50, rue Victoria
Gatineau QC K1A 0C9

Place du Portage, Phase I
22nd Floor
50 Victoria Street
Gatineau, QC K1A 0C9

Téléphone/Télécopieur
613-897-7682

Telephone/Fax
(819) 953-9267

26 July 2022

VIA EMAIL

Lax O'Sullivan Lissus Gottlieb LLP
Suite 2750, 145 King St W
Toronto ON M5H 1J8 Canada

Attention: Jonathan Lissus, Crawford Smith, Matthew Law, Bradley Vermeersch

Dear Counsel:

Re: CT-2022-002 Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc.

We are continuing to review your productions. There appear to be many deficiencies and areas for which information is missing. We are writing to advise you of these deficiencies in order to provide you with an opportunity to address them and avoid the necessity of a contested motion. The following areas concern us at this stage:

1. Schedule B: thousands of document titles are missing

Of the approximately 28,834 documents listed in Schedule B, approximately 24,990 do not have titles. The lack of document titles is contrary to paragraph 14 of the Discovery Plan. We are unable to assess Rogers' privilege basis without this information. Please provide the titles for these documents.

2. Schedule B: Solicitor-client privilege is claimed on documents for which no counsel is listed

Of those approximately 24,990, over 10,000 appear not to have counsel listed as recipients, senders, nor authors. Please provide these documents, or the particulars of the privilege asserted over each document over which you claim solicitor-client privilege, but which do not list counsel. For any that are privileged, please provide the documents with the privileged portions redacted. In addition, to help assess

privilege claims, please provide a list of Rogers' legal counsel who are listed in Schedule B.

3. Schedule B: custodians are missing

Schedule B does not include a column that lists the custodian in whose possession each document was found. The Discovery Plan identifies custodians to be searched (see paragraph 8 and the schedules of Discovery Plan). Paragraph 2 of the Bureau's *Enforcement Guidelines with respect to Production of Electronically Stored Information*, incorporated by reference in paragraph 11 of the Discovery Plan, requires listing of custodians. Please indicate the custodian(s) for each document listed.

4. Schedule B: parent-child relationship information is missing

Schedule B does not include information on the family relationships of the documents in the schedule. This requirement is set out in the section on Schedule B in the Bureau's *Enforcement Guidelines with respect to Production of Electronically Stored Information* incorporated by reference in paragraph 11 of the Discovery Plan. Please provide this metadata for each document listed in Rogers' Schedule B.

5. Schedule B: integration-related and business documents

There are several hundred documents identified so far that related to the Respondents' integration plan or that otherwise appear from their titles to be ordinary course business documents. Most do not have counsel listed as authors, senders nor receivers. We have attached a spreadsheet listing such documents. Please provide these documents or explain the basis for the privilege claim. For the ones Rogers claims are privileged, please provide the documents with the privileged portions redacted.

6. Missing metadata in Rogers' production

Rogers' production is missing metadata that is required pursuant to the Discovery Plan, which in in paragraph 11 incorporates by reference the Bureau's *Enforcement Guidelines with respect to Production of Electronically Stored Information*. Missing categories of metadata include custodians, CC and BC fields, electronic file name, and MD5 hash values. Please provide this information for each document in Rogers' production.

7. 

This document was referenced in integration plan documents, such as at slide 50 of REAA00001_000000005, but does not appear to be anywhere in Rogers' production. Please provide this document, and any related documents.

8. Password protected documents

A number of the documents in Rogers' production are password protected, such as:

ROG00686395	ROG00700812	ROG00703405
ROG00687305	ROG00700821	ROG00703406
ROG00688852	ROG00700886	ROG00703407
ROG00697701	ROG00701054	ROG00703408
ROG00698392	ROG00701056	ROG00703409
ROG00698498	ROG00701171	ROG00703673
ROG00698560	ROG00701432	ROG00703735
ROG00698581	ROG00701433	ROG00703742
ROG00698671	ROG00701434	ROG00703743
ROG00698836	ROG00701451	ROG00704064
ROG00698912	ROG00701599	ROG00704367
ROG00699018	ROG00701768	ROG00704368
ROG00699188	ROG00701769	ROG00704404
ROG00699288	ROG00701770	ROG00704405
ROG00699351	ROG00701771	ROG00704780
ROG00699561	ROG00701772	ROG00704781
ROG00699562	ROG00701773	ROG00704796
ROG00699563	ROG00701774	ROG00705624
ROG00699787	ROG00701775	ROG00706928
ROG00699788	ROG00701776	ROG00706929
ROG00699860	ROG00701777	ROG00706965
ROG00699861	ROG00701818	ROG00707172
ROG00699862	ROG00701912	ROG00707341
ROG00699863	ROG00701920	ROG00707342
ROG00699864	ROG00701950	ROG00707405
ROG00699865	ROG00701954	ROG00707699
ROG00699866	ROG00701955	ROG00708027
ROG00699867	ROG00701957	ROG00708762
ROG00699868	ROG00702335	ROG00710132
ROG00699869	ROG00702369	ROG00710211
ROG00700006	ROG00702370	ROG00710702
ROG00700007	ROG00702371	ROG00710935
ROG00700008	ROG00702451	ROG00711085
ROG00700132	ROG00702493	ROG00724633
ROG00700136	ROG00702529	ROG00746644
ROG00700163	ROG00702602	ROG00746939
ROG00700205	ROG00702630	ROG00747102
ROG00700341	ROG00702733	ROG00747105
ROG00700526	ROG00702950	ROG00747219
ROG00700527	ROG00703062	ROG00757138
ROG00700610	ROG00703316	ROG00760907
ROG00700611	ROG00703404	ROG00763649

ROG00763650	ROG00788406	ROG00790595
ROG00763918	ROG00788442	ROG00790609
ROG00764194	ROG00788457	ROG00790779
ROG00764317	ROG00788459	ROG00790857
ROG00764605	ROG00788475	ROG00794874
ROG00764633	ROG00788491	ROG00795057
ROG00764647	ROG00788496	ROG00795058
ROG00764648	ROG00788540	ROG00795450
ROG00764650	ROG00788597	ROG00795866
ROG00764651	ROG00788670	ROG00796661
ROG00764705	ROG00788754	ROG00796662
ROG00764857	ROG00788824	ROG00798243
ROG00764858	ROG00788841	ROG00798280
ROG00764859	ROG00788883	ROG00798281
ROG00764875	ROG00788887	ROG00798433
ROG00764897	ROG00788888	ROG00798434
ROG00764972	ROG00788961	ROG00799000
ROG00764999	ROG00789074	ROG00799001
ROG00765000	ROG00789078	ROG00800304
ROG00765001	ROG00789136	ROG00800312
ROG00765066	ROG00789139	ROG00800925
ROG00765144	ROG00789193	ROG00802699
ROG00765184	ROG00789269	ROG00806366
ROG00765194	ROG00789368	ROG00815155
ROG00765195	ROG00789369	ROG00815217
ROG00765196	ROG00789414	ROG00815218
ROG00765262	ROG00789426	ROG00815222
ROG00765263	ROG00789432	ROG00815305
ROG00765264	ROG00789450	ROG00815422
ROG00769744	ROG00789696	ROG00815542
ROG00771667	ROG00789729	ROG00815659
ROG00787630	ROG00789743	ROG00815660
ROG00787776	ROG00789884	ROG00815661
ROG00787963	ROG00789965	ROG00815737
ROG00788009	ROG00790022	ROG00815752
ROG00788020	ROG00790043	ROG00816005
ROG00788040	ROG00790044	ROG00816014
ROG00788110	ROG00790045	ROG00816392
ROG00788125	ROG00790169	ROG00816782
ROG00788126	ROG00790239	ROG00816843
ROG00788169	ROG00790240	ROG00816894
ROG00788243	ROG00790424	ROG00816898
ROG00788289	ROG00790450	ROG00816952
ROG00788318	ROG00790451	ROG00817147
ROG00788335	ROG00790452	ROG00817148
ROG00788368	ROG00790594	ROG00817149

ROG00817521	ROG00819188	ROG00823482
ROG00817532	ROG00819195	ROG00824281
ROG00817783	ROG00819198	ROG00824461
ROG00817952	ROG00819229	ROG00824463
ROG00818096	ROG00819230	ROG00824694
ROG00818132	ROG00819355	ROG00824695
ROG00818133	ROG00819356	ROG00825060
ROG00818188	ROG00822338	ROG00825061
ROG00818198	ROG00822339	ROG00825289
ROG00818199	ROG00822375	ROG00825290
ROG00818242	ROG00822644	ROG00825380
ROG00818332	ROG00822646	ROG00825382
ROG00818379	ROG00822718	ROG00825485
ROG00818380	ROG00822911	ROG00825696
ROG00818506	ROG00823084	ROG00832831
ROG00818510	ROG00823122	ROG00833129
ROG00818541	ROG00823123	ROG00833714
ROG00818723	ROG00823306	ROG00835925
ROG00818850	ROG00823307	ROG00836275
ROG00818872	ROG00823308	ROG00836685
ROG00819179	ROG00823459	ROG00839338

Please provide the passwords to these documents, or please indicate how these documents can be accessed.

Thank you,



Katherine Rydel
Counsel, Competition Bureau Legal Services

Encl.

cc. John Tyhurst, Derek Leschinsky, Ryan Caron, Jonathan Bitran, Kevin Hong,
Competition Bureau Legal Services

This is **Exhibit "F"** to the affidavit of Kevin McWhinnie, affirmed remotely by Kevin McWhinnie stated as being located in the city of Toronto in the province of Ontario, before me at the city of Gatineau in the province of Quebec, on July 28, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

Crawford G. Smith

Direct 416 598 8648
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www.olgc.ca

The logo for Lax O'Sullivan Lisus Gottlieb is a dark blue square with white text. The text is arranged in four lines: "Lax", "O'Sullivan", "Lisus", and "Gottlieb".

Lax
O'Sullivan
Lisus
Gottlieb

July 28, 2022

BY EMAIL

Katherine Rydel
Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
22nd Floor
50 Victoria Street
Gatineau, QC K1A 0C9

Dear Ms. Rydel:

CT-2022-002 Commissioner of Competition v. Rogers Communications Inc. and Shaw Communications Inc.

We have your July 26 letter.

Information Fields

The discovery plan agreed to by the parties outlined the information that the parties would provide in relation to the documents listed in the affidavit of documents and privilege list. The parties agreed to provide the following information:

- a. DOCID;
- b. DOCDATE;
- c. DOCTITLE;
- d. AUTHOR;
- e. TO;
- f. FROM;
- g. DOCTYPE; and
- h. CONFIDENTIALTY LEVEL.

The parties also agreed to identify the asserted privilege in the privilege list.

Rogers provided this information for the documents in its affidavit of documents and its privilege list on July 15. The information that Rogers provided was on the face of the privilege list and the coding overlay that accompanied the document production.

The Commissioner did not request and the parties did not agree to provide custodians or parent-child relationship information in the privilege list.

Rogers will provide a coding overlay for its last two productions with the requested fields: custodians, CC, BCC, electronic file name and MD5 hash values. The coding overlay will be uploaded to the secure file site shortly and transmitted by secure email. We will provide a password to access it.

While Rogers is not obliged to do so under the discovery plan, a revised privilege list is also attached with updated document titles, parent/child relationship, document author, and CC fields.

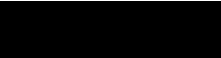

It is unfortunate that the Commissioner waited a week and a half following the delivery of Rogers' production to request the additional information. These are items that were evident on the face of the privilege list and the production overlay and items that Rogers could have provided much earlier had the Commissioner requested it at an earlier date.

Privilege Claims

Rogers is reviewing the list of documents that the Commissioner provided on July 26 and will provide specific responses as soon as possible.

Rogers has reviewed the documents that the Commissioner says 'appear not to have counsel listed'. The Commissioner's assertions are incorrect. There are 4,466 documents that do not list counsel as recipient, sender or author. All are privileged: 4,312 are attachments to emails that are sent to or from counsel for the purpose of obtaining or providing legal advice, 82 are Teams chats with counsel providing legal advice, 68 are presentations marked as privileged and confidential, 3 are Word documents reflecting legal advice and 1 is a spreadsheet, which also contains legal advice.

Rogers does not agree with the Commissioner's broad assertions about "integration-related and business documents" that are marked as privileged.


Rogers does not have a record of producing "REAA00001_000000005". In any event, several hundred of the documents in Rogers' July 15 production appear to contain reference to . It is unclear what document the Commissioner believes exists and is not contained in the production.

Password Protected Documents

Rogers attempted to unlock the password-protected documents during the document review process. We have asked the document authors to the extent they remain with Rogers to provide us with password and will send them as they become available.

Yours truly,

A handwritten signature in blue ink, appearing to read 'C.G. Smith', with a long horizontal flourish extending to the right.

Crawford G. Smith

CGS/ep
Encl.

cc. Jonathan Lissus, Matthew Law, Bradley Vermeersch, Lax O'Sullivan Lissus Gottlieb
John Tyhurst, Derek Leschinsky, Miriam Varelalizardi, Ryan Caron, Kevin Hong, Jasveen Puri,
Darian Bakelaar, Raha Mohammad, Competition Bureau Legal Services
Kent Thomson, Derek Ricci, Steven Frankel, Chanakya Sethi, Davies Ward Phillips & Vineberg LLP

This is **Exhibit "G"** to the affidavit of Kevin McWhinnie, affirmed remotely by Kevin McWhinnie stated as being located in the city of Toronto in the province of Ontario, before me at the city of Gatineau in the province of Quebec, on July 28, 2022, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Commissioner of Oaths etc.

Raha Araz Mohammad
Commissioner of Oaths etc.
Province of Ontario
LSO P15816.

Exhibit “G”

**The Revised Privilege Log provided by Rogers on July 28, 2022
has been filed and served separately due to file size.**

TAB 3

**The Affidavit of Marisa Wyse affirmed July 15, 2022
has been filed and served separately due to file size.**

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.**

Respondents

MOTION RECORD

**ATTORNEY GENERAL OF
CANADA**

DEPARTMENT OF JUSTICE
CANADA
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Competition**